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APPLICATION NO.	FILING DATE	FIRST-NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,542	12/30/2003	Rickey L. Fandel	70920-002	8565
29493 7590 09/18/2007 HUSCH & EPPENBERGER, LLC 190 CARONDELET PLAZA SUITE 600 ST. LOUIS, MO 63105-3441			EXAMINER GILBERT, WILLIAM V	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 09/18/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/748,542	<b>Applicant(s)</b> FANDEL, RICKEY L.	
	<b>Examiner</b> William V. Gilbert	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 July 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4,6-9,11-14,16,17,19 and 21-28 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6-9,11-14,17,19 and 21-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| <p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br/>Paper No(s)/Mail Date _____</p> | <p>4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br/>Paper No(s)/Mail Date. <u>03 July 07</u></p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application</p> <p>6) <input type="checkbox"/> Other: _____</p> |
|---|---|

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### **DETAILED ACTION**

This is a First Action following a Request for Continued Examination. Claims 3, 10, 15, 18 and 20 have been cancelled. Claims 5 and 16 have been withdrawn from consideration. Claims 1, 2, 4, 6-9, 11-14, 17, 19 and 21-28 are pending below.

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05 July 2007 has been entered.

#### ***Claim Objections***

2. **Claim 28** is objected to because of the following informalities: line 1 Applicant has "28." listed twice. Examiner suggests deleting the second "28." Appropriate correction is required.

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***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6-9, 11-14, 17, 19, 21, 22 and 24-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Weckerly (U.S. Patent No. 3,256,650).

Claim 1: Weckerly discloses a flashing receiver (20) comprising a thing gage material having first and second legs (see "A" and "B" respectively from Figure 2, below from Weckerly) the first leg has a height and extends longitudinally, the second leg has first and second sides, the first side is associated with a wall covering (72), and the second side is associated with a removable flashing (52), an intermediate member (36) offsetting the first and second legs, and a J-shaped channel (34, 38 and 40) that has a bottom and outer extension (40) that is parallel to an entirety of the height of the first

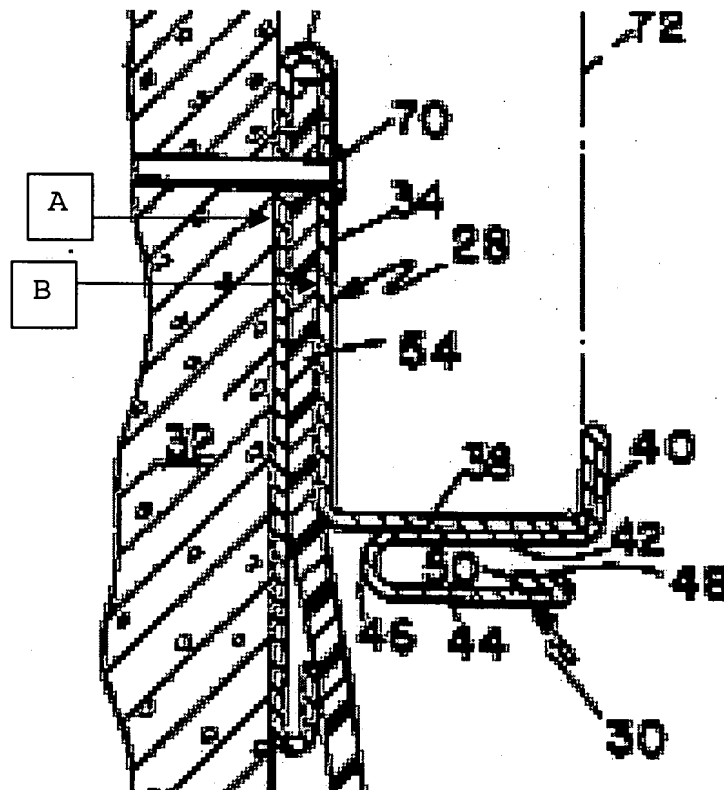


Figure 2 from Weckerly

Claim 4: a plurality of nail openings (formed by 70)

Claim 6: the intermediate member is rigid as metal is

inherently rigid.

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Claim 7: the intermediate member is resilient as metal has resilient properties.

Claim 8: a portion of the second leg is at an angle to the first leg (it is both 0 degrees and 180 degrees with respect to the first leg.)

Claim 9: an intermediate portion (portion proximate 36) is at an angle to the first and second legs.)

Claim 11: the J-shaped channel (portions 34, 38 and 40) is at a height above the bottom.

Claim 12: the J-shaped channel overlaps a portion of flashing (52).

Claim 13: Weckerly discloses a flashing receiver (20) comprising a thin gage material having first and second legs ("A" and "B", respectively, above), the first leg has a top and bottom and extends longitudinally, a portion of the second leg forms a J-shaped channel (34, 38, 40), the second leg has a first side associated with a wall covering (72) and a second side associated with a removable flashing (52), a plurality of nail slots (formed by 70) extending through the first and second legs and proximate the top, and an intermediate member (36) offsetting the first leg from the second leg, the intermediate member is resilient, the J-shaped channel has an outer extension (40) parallel to the first leg and the parallel portion of the

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first leg extends at least as far as a bottom of the J-shaped channel.

Claim 14: the material is metal (Col. 2, lines 15-20).

Claim 17: a portion of the second leg is at an angle to the first leg (it is both 0 degrees and 180 degrees with respect to the first leg.)

Claim 19: the J-shaped channel is at a height above the bottom.

Claim 21: the phrase "preconfigured distance sufficient to allow the installation of roofing components between a bottom of the first leg and a bottom of said J shaped channel", is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 22: the phrase "being a preconfigured distance sufficient to protect roofing components underneath said J shaped component" is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the

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prior art structure is capable of performing the intended use, then it meets the claim.

Claim 24: the J-shaped channel is wide enough to receive a bottom of a siding panel. Note that only the flashing receiver is claimed, not a siding panel.

Claim 25: the first leg extends in a substantially flat plane at least as far as a height of said second leg.

Claim 26: Weckerly discloses a flashing receiver comprising a thin gauge material having a first and second leg ("A" and "B" respectively), the first leg having a first extend in a first direction and a longitudinal extent forming a mounting face, the second leg has first and second sides, the first side is associated with a wall covering (72) and the second side is associated with a removable flashing (52), an intermediate member (36) offsetting the first leg from the second leg, a J-shaped channel (34, 48 and 40) in the second leg having a bottom and outer extension that is parallel to an entirety of the extent of the first leg in the first direction, the extent of the parallel portion is the first leg extends at least as far as said bottom of the J-shaped channel.

Claim 27: the first leg extends beyond the bottom of the J-shaped channel.



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Claim 28: the first leg extends beyond the bottom of the J-shaped channel.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claim 23** is rejected under 35 U.S.C. 103(a) as being unpatentable over Weckerly.

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Claim 23: the prior art of record discloses the claimed invention except for the preconfigured distance. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have this limitation because the prior art of record is capable of meeting this limitation and one of ordinary skill in the art could design the prior art of record to meet the structural limitation and make the preconfigured distance any distance to satisfy any needed dimension. See M.P.E.P. §2144.04.

#### ***Response to Arguments***

5. Applicant's arguments with respect to the claims as amended have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the

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organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WVG

25th  
13 Sep 07

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10/3635 9/13/07